

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

ELMER DAUGHERTY,

Claimant,

v.

Case No. 2:05-00853

WESTMORELAND COAL CO.,

Employer,

and

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,
U.S. DEPARTMENT OF LABOR,

Party-In-Interest.

MEMORANDUM OPINION AND ORDER

Pending before the court is Westmoreland Coal Company's ("Westmoreland") motion to stay this action pending a resolution of an administrative appeal to the United States Department of Labor Benefits Review Board (Docket No. 2).

With their motion, Westmoreland avers that it filed a Notice of Appeal of an administrative law judge's ("ALJ") decision dated October 21, 2005 pursuant to 20 C.F.R. § 725.481, and that as such, this case is not ripe for review by the court. (See Docket No. 3 at 5-6.) Specifically, Westmoreland argues that under the two-prong test outlined in Abbot Laboratories v. Gardner, 387 U.S. 136, 149-150, 153 (1967), this case should be stayed because Daugherty has not yet completed the prescribed administrative

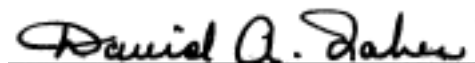
process applicable to his claim, and because Daugherty cannot show that staying this matter pending completion of the administrative appeal will harm him. (See Docket No. 3 at 6-10.) For his part, Daugherty has filed no objection to Westmoreland's motion.

As such, for the reasons included in the Memorandum in support of their motion, Westmoreland's motion to stay (Docket No. 2) is **GRANTED**. The parties are **DIRECTED** to notify the court when Westmoreland's administrative appeal is concluded as, at that time, this case will be ripe for judicial scrutiny as defined under the Administrative Procedures Act. See 5 U.S.C. § 704.

The Clerk is directed to send a copy of this Order to all counsel of record and to any unrepresented party.

It is **SO ORDERED** this 7th day of December, 2005.

Enter:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Chief Judge